

ADM-11.10, "Dual Employment," July 1, 2004

SCDC POLICY/PROCEDURE

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NUMBER: ADM-11.10

TITLE: DUAL EMPLOYMENT

ISSUE DATE: JULY 1, 2004

RESPONSIBLE AUTHORITY:DIVISION OF HUMAN RESOURCES

OPERATIONS MANUAL:ADMINISTRATION

SUPERSEDES: ADM-11.10 (March 1, 2000); Change 1 (February 25, 2000)

RELEVANT SCDC FORMS/SUPPLIES: 15-20, 16-5, 16-24, 16-34, 16-63

ACA/CAC STANDARDS:3-ACRS-1C-02, 3-4048, 3-4067

STATE/FEDERAL STATUTES: Fair Labor Standards Act; Section 19-702.10, State Human Resources Regulations

THE LANGUAGE USED IN THIS POLICY/PROCEDURE DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS POLICY/PROCEDURE DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENTS OF THIS POLICY/PROCEDURE, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT.

PURPOSE: To outline guidelines for dual employment contracts between SCDC employees and other state agencies or between the SCDC and employees from other state agencies.

POLICY STATEMENT: In an effort to provide technical assistance and expertise to other state agencies, the South Carolina Department of Corrections (SCDC) will authorize full/part-time employees to enter into dual employment contracts with state agencies provided that the provision of such services does not conflict with their official SCDC position. Dual employment contracts will be completed in full compliance with applicable State Office of Human Resources Regulations. (3-4067)

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SPECIFIC PROCEDURES:

1. GENERAL PROVISIONS:

1.1 All dual employment will be in full compliance with Section ~~19-702.1~~ 19-713 of the State Human Resources Regulations, unless specific written exception is obtained from the State Office of Human Resources.

1.2 The practice of dual employment will not be used to provide higher continuing salaries than those approved by the State Budget and Control Board. Any employee engaged in dual employment must satisfy the requirements of his/her established hours of work for his/her home (primary) agency.

1.3 Employees providing consultative, research, or other services to the General Assembly will receive no additional compensation for such services.

1.4 Dual employment is approved in duration based on the fiscal year and can be for a specific time frame. Should services be required beyond the scope or time frame approved, the dual employment request must be resubmitted for renewal.

1.5 An employee may not accept any work or compensation that could be reasonably construed as a conflict of interest. Acceptance without prior approval of work assignment or compensation that is found to be a conflict of interest will be grounds for corrective action up to termination in accordance with SCDC Policy/Procedure ADM-11.04, "Employee Corrective Action." (3-4067)

2. APPROVAL OF DUAL EMPLOYMENT: 2.1 It is the responsibility of the requesting (secondary) agency to initiate and to provide all pertinent information describing the conditions and terms of the services to be provided to the requesting agency on SCDC Form 16-34, "Dual Employment Request." Additionally,

the appropriate signature(s) of the employee and requesting agency director/designee must be obtained before forwarding the Dual Employment Request to the Division of Human Resources of the home (primary) agency.

2.2 If SCDC is the employing (primary) agency, and another state agency is the requesting (secondary) agency, the dual employment request must be initiated by the requesting (secondary) location and forwarded to the Division of Human Resources for further approvals.

2.3 The requesting (secondary) agency must initiate SCDC Form 16-34, "Dual Employment Request," obtain required approvals, and forward to the employing (primary) agency for completion and approval. The completed form should be returned to the secondary agency for further approvals based on the following:

2.3.1 If SCDC is the requesting (secondary) agency, SCDC Form 16-34, "Dual Employment Request," once approved by the primary (home) agency (if other than SCDC), must be submitted to the Division Director of Human Resources or designee. A completed SCDC Form 16-24, "Service Provider/Non-Employee Background Check," must accompany the form. The Division Director of Human Resources or designee will refer any non-SCDC employee to be employed in a dual employment position to the Recruiting and Employment Services Branch as stipulated in SCDC Policy/Procedure ADM-11.28, "Applicant Selection Process," prior to any services being rendered and compensated.

2.3.2 The Division Director of Human Resources or designee will have the final approval for dual employment requests where the SCDC is the requesting (secondary) agency. The final approval will be based on completion of the pre-employment process. The Chief, Payroll/Classification Branch, or designee ~~will coordinate with the Chief, Classification and Compensation Branch or designee~~ will be responsible for position establishment. The requesting Warden or Division Director will be notified of the approved/disapproved request.

2.3.3 A non-SCDC employee working dual employment will be required to report to the SCDC Training Academy ID Station to have an Agency ID made.

2.4 Requests for dual employment for non-exempt employees must be approved by the Agency Director.

2.5 The Division Director of Human Resources or designee will be responsible for reviewing and signing the form as the authorized official of the dual employment request for exempt employees. Notification of an approved/disapproved dual employment request will be made to the employee, appropriate Warden/Division Director, and appropriate member of the Director's staff by the Division of Human Resources.

2.6 An approved "Dual Employment Request" form must be retained by both the employing and requesting agency.

2.7 The requesting agency must manage, communicate, and coordinate dual employment arrangements.

2.8 The employing agency is responsible for processing dual employment requests in a timely manner.

2.9 Any modifications or extensions of a dual employment agreement must be submitted to and approved by the Division Director of Human Resources or designee. The Division Director of Human Resources or designee will notify the appropriate Warden/Division Director and appropriate member of the Director's staff of any modification or extensions.

2.10 Dual employment requests are approved on a fiscal year basis and will require re-approval each fiscal year. The Chief, Payroll Classification Branch, Division of Human Resources, or designee will notify affected Wardens and Division Directors when renewals must be requested.

2.11 While not necessarily constituting dual employment, SCDC employees who obtain employment at an establishment/business which employs inmates (work release) or houses inmates (Designated Facility, privately operated facility, etc.) must have the written approval of their Warden or Division Director and appropriate member of the Director's staff. Employees must agree to enforce all Agency policies/procedures as they pertain to inmates while on duty in their second job.

3. SCHEDULING DUAL EMPLOYMENT:

3.1 An employee cannot receive dual employment compensation for services performed during his/her normal scheduled hours of work (including mealtime) unless the employee takes annual leave or leave without pay. An employee's work schedule will not be altered or revised to provide time to perform dual employment duties. An employee may request to use annual leave while providing services during working hours for a requesting agency and may receive compensation from that agency for services performed during the period of leave. However, an employee cannot receive any additional compensation from the employing agency while in a leave with pay status, to include all designated paid state holidays and compensatory leave.

3.2 Employees who perform services during hours other than their normal schedule for the employing agency may be paid additional compensation if such services constitute independent, additional duties above and over those of the employee's primary position within the agency. (3-ACRS-1C-02, 3-4048)

4. COMPENSATION FOR DUAL EMPLOYMENT:

4.1 Employees performing dual employment services must report all dual employment hours worked on SCDC Form 16-63, "Payroll Authorization," by designated pay periods and deadlines published by the Division of Human Resources. SCDC Form 16-63 must be signed by the employee and the employee's supervisor, as it is imperative that accurate records of all hours worked be maintained. (3-ACRS-1C-02, 3-4048)

4.2 No compensation for dual employment will be paid to an employee for services rendered under a dual employment agreement prior to the specific approval of the conditions and amount of compensation specified in the provisions of these procedures.

4.3 A non-exempt employee must be paid a rate of time and one-half for services rendered.

4.4 An exempt employee may be paid any rate as negotiated with the requesting (secondary) agency for services rendered.

4.5 The maximum compensation an employee may earn for dual employment in a fiscal year should not exceed 30% of the employee's annualized salary for the fiscal year. To exceed the 30% limitation, the secondary agency must request approval of the State Office of Human Resources through the SCDC Division of Human Resources.

4.6 The employing and requesting agencies must ensure compliance with the Fair Labor Standards Act (FLSA) requirements for non-exempt employees.

4.7 Payment of dual employment compensation should be made in a timely manner. The requesting agency is required to make payment of funds approved for and earned under dual employment within 45 days of the start of the dual employment contract.

4.8 An employee will not be eligible for any additional fringe benefits as a result of dual employment, including annual leave, sick leave, military leave, state insurance, and/or holidays.

4.9 Dual employment compensation will be subject to such mandatory deductions as the Comptroller General and applicable laws and regulations may stipulate.

4.10 If duties to be performed constitute service by the employee on a board, commission, or committee for which per diem allowance is to be awarded, the employee is not eligible to receive such per diem allowance.

4.11 Travel and subsistence paid to an employee by the requesting agency will be in compliance with State Budget and Control Board and the Comptroller General's Office travel regulations and/or, if applicable, the requesting agency's travel regulation policies/procedures.

5. RECORDKEEPING: All approved SCDC Form 16-34s, "Dual Employment Request," will contain the following information:

- name of the employing (primary) agency, address, and phone number;
- name of employee, class title of position occupied, the FLSA status of the employee's work being performed at the employing agency, present annualized salary of employee, and scheduled hours of work at the employing agency;
- name of the requesting (secondary) agency;
- description of services to be performed, to include inclusive dates describing the duration of services, hours of work, and FLSA status of the work to be performed for the requesting agency;
- dates of dual employment (Request for dual employment must be based in the fiscal year, i.e., ending date will always be 6/30 or prior of the current fiscal year. The beginning date will be based on the negotiated date between the primary and secondary agency, and necessary approvals);
- amount and terms of compensation to include travel and subsistence, if applicable; and

- signature of requesting and employing agency directors (or their approved designees [see Section 2, above]) and of the employee.

6. TERMINATION OF DUAL EMPLOYMENT SERVICES:

6.1 The responsible location must ensure that the Chief, Payroll Branch, or designee is notified when an employee no longer works in a dual employment capacity. The Warden or Division Director will complete SCDC Form 16-5, "Personnel Advice Form," and will clearly denote ~~that the termination is for dual employment status.~~ "Dual Employment Termination" on the top right corner of the Personnel Advice Form.

6.2 The Warden or Division Director must ensure that the employee turns in all SCDC items issued upon termination of services from the Agency or from an Agency dual employment assignment which was the justification for the issuance of said items.

7. DEFINITIONS:

Dual Employment refers to the employment and compensation of a state employee for services rendered of any nature for the employing (primary) or requesting (secondary) agency. Compensation cannot be for services that are a part of his/her regular job.

Dual Employment Agreement refers to a written, formal document, approved by both the employing (primary) agency and the requesting (secondary) agency, which sets forth all terms and conditions for the dual employment of an employee.

Employee ID Card refers to an identification card issued to any person deemed an "employee" or "service provider" as defined by this policy/procedure.

Exempt Employee refers to an employee whose position is exempt from both the minimum wage and overtime requirements of the Fair Labor Standards Act (FLSA) due to employment in a bona fide executive, administrative, or professional position.

Fair Labor Standards Act (FLSA) refers to a law that establishes exempt and non-exempt categories of positions and the guidelines that apply to each category. All positions are either exempt or non-exempt.

Fiscal Year refers to the period of time during which a dual employment request can be approved. Fiscal years run from July 1 through June 30 each year.

Non-Exempt Employee refers to an employee whose position is covered by the Fair Labor Standards Act and who is; therefore, subject to both minimum wage and overtime requirements of the law.

FTE State Employee refers to any person in the employ of an agency who is paid a salary or wage and is occupying a full/part-time equivalent position.

Primary Employer (Home Agency) refers to the agency in state government that pays an employee on a full/part-time basis in an FTE position.

Secondary Employer (Requesting Agency) refers to the agency in state government requesting services of an employee who is already in state government occupying an FTE position.

Service Provider refers to any person not included on the SCDC payroll and designated by a Warden, Division Director, appropriate member of the Director's staff, Agency Director, or designee as performing regular, routinely scheduled services at any Agency institution or office.

SIGNATURE ON FILE

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s/Jon E. Ozmint, Director

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